

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES. See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.

FILED BY CLERK  
APR -2 2009  
COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

DWAYNE HEAD,	)	
	)	
Plaintiff/Appellee,	)	2 CA-CV 2008-0159
	)	DEPARTMENT B
v.	)	<u>MEMORANDUM DECISION</u>
	)	Not for Publication
WADE HAYES,	)	Rule 28, Rules of Civil
	)	Appellate Procedure
Defendant/Appellant.	)	

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APPEAL FROM THE SUPERIOR COURT OF COCHISE COUNTY

Cause No. CV200800385

Honorable Wallace R. Hoggatt, Judge

DISMISSED

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Cardinal & Stachel, P.C.	
By Robert D. Stachel and Nathan J. Williams	Sierra Vista
	Attorneys for Defendant/Appellant

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B R A M M E R, Judge.

¶1 This appeal arises from a complaint filed in Cochise County Justice Court by landlord Dwayne Head seeking compensation for damages allegedly caused to his rental property by former tenant Wade Hayes. After a trial on Head’s claim and Hayes’s counterclaim alleging Head had violated A.R.S. § 33-1321(D) by failing to return Hayes’s

security deposit, the justice court entered judgment in favor of Head. Pursuant to A.R.S. § 22-261, Hayes appealed the decision to the Cochise County Superior Court, which affirmed the justice court's judgment.

¶2 Hayes now appeals from the superior court's decision affirming the justice court's judgment against him. He claims the lower courts erred in determining § 33-1321(D) required him to make a formal demand on Head for his security deposit, in finding he had failed to make such a demand, and in denying his counterclaim on that basis. Although Hayes has failed to include the required jurisdictional statement in his opening brief, *see* Ariz. R. Civ. App. P. 13(a)(3), we have an independent duty to confirm our jurisdiction over an appeal before reaching the merits.<sup>1</sup> *See Grand v. Nacchio*, 214 Ariz. 9, ¶ 12, 147 P.3d 763, 769 (App. 2006). We conclude we lack jurisdiction over Hayes's appeal.

¶3 This court has jurisdiction only of actions "originating in or permitted by law to be appealed from the superior court." A.R.S. § 12-120.21(A)(1). Although A.R.S. § 12-2101(B) grants us jurisdiction over appeals from a "final judgment entered in an action . . . brought into a superior court from any other court," that language "does not refer to cases appealed from the justice court, but rather refers to cases transferred or brought into superior court by some process other than appeal." *Sanders v. Moore*, 117 Ariz. 527, 528, 573 P.2d 927, 928 (App. 1977). And, Rule 14(b) of the Superior Court Rules of Civil Appellate

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<sup>1</sup>Head's failure to file an answering brief in response to Hayes's appellate claims could be considered "a confession of error," *In re 1996 Nissan Sentra*, 201 Ariz. 114, ¶ 7, 32 P.3d 39, 42 (App. 2001), but this principle does not apply to questions of subject matter jurisdiction, which cannot be waived. *See Green v. Lisa Frank, Inc.*, No. 2 CA-CV 2008-0028, ¶ 57, 2009 WL 303787 (Ariz. Ct. App. Jan. 20, 2009).

Procedure prohibits any appeal “from a final decision or order of the superior court [on review of a judgment of the justice court], except where the action involves the validity of a tax, impost, assessment, toll, statute or municipal ordinance.” *See* Ariz. Const. art. VI, § 5(3) (granting supreme court appellate jurisdiction over cases originating in justice court only if they “involve[] the validity of a tax, impost, assessment, toll, statute or municipal ordinance”). Accordingly, our courts have previously held that where, as here, an appeal from an action originating in a justice court does not challenge the validity of a tax, impost, assessment, toll, statute, or municipal ordinance, we have no jurisdiction over the appeal. *See, e.g., Sanders*, 117 Ariz. at 528, 573 P.2d at 928; *see also Roubos v. Miller*, 213 Ariz. 36, ¶ 2, 138 P.3d 735, 736 (App. 2006) (noting no direct appeal available from superior court’s review of justice court decision). We therefore dismiss Hayes’s appeal.

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J. WILLIAM BRAMMER, JR., Judge

CONCURRING:

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PETER J. ECKERSTROM, Presiding Judge

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GARYE L. VÁSQUEZ, Judge